

No. 18,448

IN THE

United States Court of Appeals  
For the Ninth Circuit

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HERMAN G. GUMATAOTAO, vs. GOVERNMENT OF GUAM,	<i>Appellant,</i> <i>Appellee.</i>
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REPLY BRIEF OF APPELLANT

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FILED



## Subject Index

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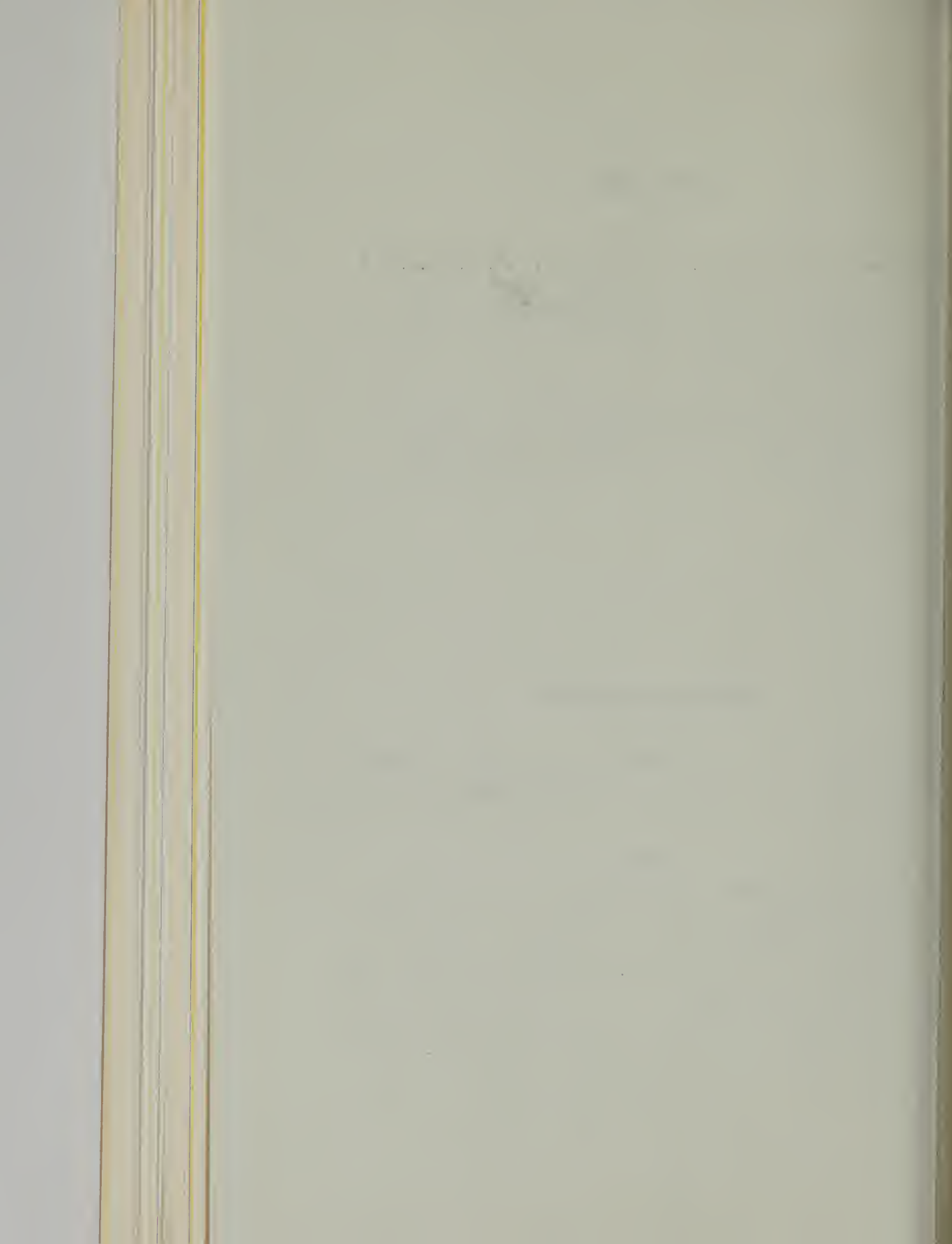
	Page
Argument .....	1
1. Appellant is entitled to the benefit of every reasonable doubt as to the true interpretation of words and the construction of language used in Penal Code of Guam (1953), Section 273a .....	1
2. The code section the object and purpose of which is to protect "any child" from becoming a prey to designing adults is Code of Civil Procedure of Guam (1953), Section 263(d), not Penal Code of Guam (1953), Section 273a .....	2

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## Table of Authorities Cited

---

Cases	Pages
People v. Ralph, 24 Cal.2d 575, 150 P.2d 401 (1944) .....	2
<b>Codes</b>	
Code of Civil Procedure of Guam (1953):	
Section 263(d) .....	2, 3
Penal Code of California:	
Section 4 .....	2
Penal Code of Guam (1953):	
Section 4 .....	2
Section 273a .....	1, 2, 3



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**ARGUMENT**

1. APPELLANT IS ENTITLED TO THE BENEFIT OF EVERY REASONABLE DOUBT AS TO THE TRUE INTERPRETATION OF WORDS AND THE CONSTRUCTION OF LANGUAGE USED IN PENAL CODE OF GUAM (1953), SECTION 273a.

Appellee says,

“The construction of any provision in the Penal Code of Guam is governed by Section 4 thereof, which reads as follows: ‘4. Construction of the Penal Code. The rule of the common law, that penal statutes are to be strictly construed, has no application to this code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice.’” Brief for Appellee 7.

Penal Code of Guam (1953), Section 4 is identical to Penal Code of California, Section 4. And the Supreme Court of California has stated,

“When language which is reasonably susceptible of two constructions is used in a penal law ordinarily that construction which is more favorable to the offender will be adopted. In other words, criminal statutes will not be built up ‘by judicial grafting upon legislation. . . . [I]t is also true that the defendant is entitled to the benefit of every reasonable doubt, whether it arises out of a question of fact, or as to the true interpretation of words or the construction of language used in a statute.’” *People v. Ralph*, 24 Cal.2d 575, 581, 150 P.2d 401, 404 (1944).

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2. THE CODE SECTION THE OBJECT AND PURPOSE OF WHICH IS TO PROTECT “ANY CHILD” FROM BECOMING A PREY TO DESIGNING ADULTS IS CODE OF CIVIL PROCEDURE OF GUAM (1953), SECTION 263(d), NOT PENAL CODE OF GUAM (1953), SECTION 273a.

Appellee argues,

“ . . . [T]his Court is being asked to construe the following provision of Section 273a, Penal Code of Guam: ‘ . . . causes a child to become in need of the care and protection of the Juvenile Court. . . . ’

“ . . . . .

“The object and main purpose of this provision . . . is to protect *any child* from becoming a prey to designing adults.” Brief for Appellee 7-8 (emphasis added).

It is not the object or purpose of said provision to protect "any child" from becoming a prey to designing adults. Said provision does not protect a child *already* in need of the care and protection of the Juvenile Court of Guam:

*"Any person who commits any act or omits the performance of any duty, which act or omission causes a child to become in need of the care and protection of the Juvenile Court, shall be guilty of a misdemeanor, may be tried for such offense in the Juvenile Court, and upon conviction may be punished by a fine not exceeding \$500, or by imprisonment not exceeding one year, or by both such fine and imprisonment."* Guam Pen. Code (1953), Section 273a (emphasis added).

That Enrique F. Santos was *already* in need of the care and protection of the Juvenile Court of Guam appellee *concedes*. Brief for Appellee 8. And as Enrique F. Santos was *already* in need of the care and protection of the Juvenile Court of Guam, appellant could not have caused him to *become* in need of such care and protection.

The provision the object and purpose of which is to protect "any child" from becoming a prey to designing adults is contained in Code of Civil Procedure of Guam (1953), Section 263(d):

*". . . [T]he court may require . . . any . . . person who has been found by the court to be encouraging, causing or contributing to the acts or conditions which bring the child within the*

*purview of this Title, to do or omit to do any acts required or forbidden by law, when the judge deems such requirement necessary for the welfare of the child.”* (Emphasis added.)

Respectfully submitted,

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